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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

1685.0300001

First named inventor: *CROWLEY, Jake J.*

Application No.: *10/656,046*

Art Unit: *3683*

Filed: *September 5, 2003*

Examiner: *Robert Siconolfi*

Title: *Shopping Cart Brake System*

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (703) 872-9306

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The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☒ Small entity-fee \$ *750.⁰⁰* (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of *Response To OFFICE ACTION* (identify type of reply):

☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of \$ _____

☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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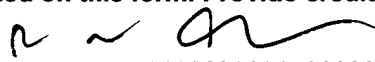
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3. Terminal disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

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 Signature

12-29-2004
 Date

Raymond M. Galasso
 Typed or printed name

37,832
 Registration Number, if applicable

P.O. Box 26503, Austin, Tx. 78755-0503
 Address

(512) 372-8240
 Telephone Number

Enclosures: ☒ Fee Payment - *Authorized to charge Simon, Galasso & Frantz*
Deposit Account 50-1259.

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay


☒ Other: *Confirmation postcard*

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☒ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (703) 872-9306.

12-29-2004
 Date


 Signature

Raymond M. Galasso
 Typed or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
 Jake J. Crowley

By the Examiner: Robert Siconolfi

Serial No.: 10/656,046

Group Art Unit: 3683

Filed: September 5, 2003

Title: Shopping Cart Brake System

CERTIFICATE OF MAILING

Date of Deposit: December 29, 2004
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 Alexandria, VA 22313-1450

Type or Print Name Martha Rocha

Martha Rocha
 Signature

Mail Stop Non-Fee Amendment
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

**PETITION FOR REVIVAL OF AN APPLICATION
 FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

STATEMENT

Applicant hereby petitions for revival of this application. Applicant unintentionally missed the deadline for filing a response to the Office Action of April 30, 2004. Applicant misunderstood the deadline for filing its response to the Office Action. The entire delay in filing its Response to the Office Action by the deadline of July 30, 2004 until the filing of this grantable petition under 37 CFR 1.137(b) was unintentional.

The Applicant has now met all the requirements by filing the necessary documents and paying the requisite fees as shown by the attached "Petition For Revival of An Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b) (Form PTO/SB/64)" and by filing its Response to the Office Action.

The Commissioner is hereby authorized to charge the fees associated with this communication to Simon, Galasso & Frantz Deposit Account No. 50-1259 under Reference No. 1685.0300001.

Applicant request that the Office excuse the delay and respectfully requests that the Office revive and reinstate said Application. Applicant has fulfilled all the conditions/acts required for responding to the Office Action. Applicant respectfully request prompt favorable action.

Respectfully Submitted,
 Jake J. Crowley

By: *Raymond M. Galasso*
 Raymond M. Galasso
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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By the Examiner: Robert Siconolfi

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Type or Print Name Marta Rocha

Marta Rocha
 Signature

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Respectfully Submitted,
 Jake J. Crowley

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of:
Jake J. Crowley

By the Examiner: Robert Siconolfi

Serial No.: 10/656,046

Group Art Unit: 3683

Filed: September 5, 2003

Title: Shopping Cart Brake System

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Type of Print Name Martha Rochna

Signature

TRANSMITTAL LETTER

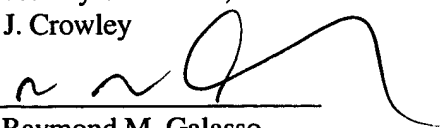
Dear Sir:

Transmitted herewith for filing in the above-identified U.S. Nonprovisional
application for patent are the following documents:

1. Form PTO/SB/64 – Petition For Revival of An Application For Patent Abandoned
Unintentionally Under 37 CFR 1.137(b);
2. Statement – Petition For Revival of An Application For Patent Abandoned
Unintentionally Under 37 CFR 1.137(b);
3. Response to Office Action (13 pp); and
4. Confirmation Postcard. Please stamp date and return.

The Commissioner is hereby authorized to charge the fees associated with this
communication or credit any overpayment to Simon, Galasso & Frantz Deposit Account No.
50-1259 under Reference Number 1685.0300001.

Respectfully Submitted,
Jake J. Crowley

By: 
Raymond M. Galasso
Reg. No. 37,832

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PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: : By the Examiner: Robert Siconolfi
Jake J. Crowley :
Serial No.: 10/656,046 : Group Art Unit: 3683
Filed: September 5, 2003 :
Title: Shopping Cart Brake System

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Type or Print Name Martha Rocha

Martha Rocha
Signature

RESPONSE TO OFFICE ACTION

Dear Sir or Madame:

This is a response to an Office Action mailed April 30, 2004 by the United States Patent And Trademark Office (the Office). The Applicant requests reconsideration of the above-identified application in view of the amendments and remarks presented herein.

Amendments of the Claims begin on page 2 of this correspondence;

Remarks begin on page 9 of this correspondence; and

Conclusions begin on page 13 of this correspondence.

IN THE CLAIMS

Please amend the claims as follows. This listing of the claims will replace all prior versions, and listings, of the claims in the Application.

1. (current amended) A brake system configured for use with a shopping cart, comprising:
 - a shopping cart handle having opposed ends;
 - a pivoting member attached to each one of said opposed ends of the shopping cart handle and configured for being attached to a shopping cart frame, wherein each pivoting member enables the shopping cart handle to be moved between an at-rest position and a displaced position; and
 - a braking force apparatus coupled to the shopping cart handle, wherein the braking force apparatus is configured for being selectively movable between a normally applied braking force state and a disengaged state when the handle is correspondingly moved between the at-rest position and the displaced position;[[.]]

wherein the shopping cart handle is configured for having a force exerted thereon for pushing said attached shopping cart frame and wherein the force exerted for pushing said attached shopping cart moves the shopping cart handle from the at-rest position to the displaced position.
2. (original)The system of claim 1, further comprising:
 - a cable connected between the shopping cart handle and the braking force apparatus, wherein the cable applies a force for moving the braking force apparatus from the normally applied braking force state to the disengaged state when the shopping cart handle is moved from the at-rest position toward the displaced position.
3. (original)The system of claim 2, further comprising:

a resilient member coupled to the shopping cart handle, wherein the resilient member biases the shopping cart handle toward the at-rest position whereby the cable exerts a corresponding force on the braking force apparatus for biasing the braking force apparatus to the normally applied braking force state.

4. (original)The system of claim 2, further comprising:
means for applying a force on the cable when the shopping cart handle is moved from the at-rest position toward the displaced position.
5. (original)The system of claim 1 wherein the braking force apparatus includes a resilient member biasing the braking force apparatus to the normally applied braking force state.
6. (original)The system of claim 1 wherein the braking force apparatus is configured for applying a braking force on at least one of opposed faces of a shopping cart wheel and a rolling surface of a shopping cart wheel.
7. (original)The system of claim 1 wherein the braking force apparatus includes a wheel clamping caliper.
8. (original)The system of claim 1, further comprising:
a cable connected between the shopping cart handle and the braking force apparatus;
means for biasing the braking force apparatus to the normally applied braking force state; and
means for applying a force on the cable when the shopping cart handle is moved from the at-rest position toward the displaced position;
wherein the cable applies a force on the braking force apparatus when the handle is moved from the at-rest position toward the displaced position, and wherein the braking force apparatus is configured for applying a braking force on at least one of

opposed faces of a shopping cart wheel and on a rolling surface of the shopping cart wheel.

9. (currently amended)A shopping cart, comprising:

a shopping cart frame;

a handle assembly including an elongated handle having opposed ends and a pivoting member attached between each one of said opposed ends and the shopping cart frame, thereby enabling the elongated handle to be moved between an at-rest position and a displaced position; and

a braking force apparatus coupled to the elongated handle and mounted on the shopping cart frame adjacent to a wheel assembly mounting location of the shopping cart frame, wherein the braking force apparatus is configured for being selectively movable between a normally applied braking force state and a disengaged state when the handle is correspondingly moved between the at-rest position and the displaced position;[[.]]

wherein the elongated handle is configured for having a force exerted thereon for pushing the shopping cart frame and wherein the force exerted for pushing the shopping cart frame moves the shopping cart handle from the at-rest position to the displaced position.

10. (original)The system of claim 9, further comprising:

a cable connected between the elongated handle and the braking force apparatus, wherein the cable applies a force for moving the braking force apparatus from the normally applied braking force state to the disengaged state when the elongated handle is moved from the at-rest position toward the displaced position.

11. (original)The system of claim 10, further comprising:

a resilient member coupled to the elongated handle bar, wherein the resilient member biases the elongated handle bar toward the at-rest position whereby the cable exerts a corresponding force on the braking force apparatus for biasing the braking force apparatus to the normally applied braking force state.

12. (original)The system of claim 9 wherein the braking force apparatus includes a resilient member biasing the braking force apparatus to the normally applied braking force state.

13. (original)The system of claim 9 wherein the braking force apparatus is configured for applying a braking force on at least one of opposed faces of a shopping cart wheel and a rolling surface of a shopping cart wheel.

14. (original)The system of claim 9, further comprising:

a cable connected between the shopping cart handle and the braking force apparatus;

means for biasing the braking force apparatus to the normally applied braking force state; and

means for applying a force on the cable when the shopping cart handle is moved from the at-rest position toward the displaced position;

wherein the cable applies a force on the braking force apparatus when the handle is moved from the at-rest position toward the displaced position, and wherein the braking force apparatus is configured for applying a braking force on at least one of opposed faces of a shopping cart wheel and on a rolling surface of the shopping cart wheel.

15. (currently amended) A shopping cart, comprising:

- a shopping cart frame;
- a plurality of wheel assemblies mounted on the shopping cart frame;
- a handle pivotally attached to the shopping cart frame, wherein the handle is movable between an at-rest position and a displaced position; and
- a braking force apparatus coupled to the handle and mounted on the shopping cart frame in a manner enabling a braking force to be applied on one of said wheel assemblies, wherein the brake force apparatus applies the braking force when the handle is in the at-rest position and disengages the braking force when the handle is moved toward the displaced position;[[.]]

wherein the handle is configured for having a force exerted thereon for pushing the shopping cart frame and wherein the force exerted for pushing the shopping cart frame moves the shopping cart handle from the at-rest position to the displaced position.

16. (original)The system of claim 15, further comprising:

- a cable connected between the handle and the braking force apparatus, wherein the cable applies a force for moving the braking force apparatus from the normally applied braking force state to the disengaged state when the handle is moved from the at-rest position toward the displaced position.

17. (original)The system of claim 16, further comprising:

- a resilient member coupled to the handle, wherein the resilient member biases the handle toward the at-rest position whereby the cable exerts a corresponding force on the braking force apparatus for biasing the braking force apparatus to the normally applied braking force state.

18. (original)The system of claim 15 wherein the braking force apparatus includes a resilient member biasing the braking force apparatus to the normally applied braking force state.

19. (original)The system of claim 15 wherein the braking force apparatus is configured for applying a braking force on at least one of opposed faces of a shopping cart wheel and a rolling surface of a shopping cart wheel.

20. (original)The system of claim 16, further comprising:

a cable connected between the shopping cart handle and the braking force apparatus;

means for biasing the braking force apparatus to the normally applied braking force state; and

means for applying a force on the cable when the shopping cart handle is moved from the at-rest position toward the displaced position;

wherein the cable applies a force on the braking force apparatus when the handle is moved from the at-rest position toward the displaced position, and wherein the braking force apparatus is configured for applying a braking force on at least one of opposed faces of a shopping cart wheel and on a rolling surface of the shopping cart wheel.

REMARKS

The Application has been carefully reviewed in light of the Office Action mailed April 30, 2004. At the time of this Office Action, Claims 1-20 were pending in the Application and Claims 1-20 were rejected. In order to advance prosecution of this case, Claims 1, 9 and 15 have been amended to overcome the rejections asserted by the Office. It is believed that the amended claims does not involve any introduction of new matters, whereby entry is believed to be in order and is respectfully requested. The Applicant respectfully requests reconsideration and favorable action in this case.

The following actions were taken or matters raised: (I) Claims 1-2, 4-6, 8-10, 12-16, and 18-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Brubaker (U. S. Patent no. 5,735,367); (II) Claims 3, 11, and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brubaker in view of DeGoma (U. S. Patent no. 6,296,261); and (III) Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Brubaker in view of Mennesson (U. S. Patent no. 2,699,228).

Claims Rejected Under 35 U.S.C. 102(b)

The Office has rejected Claims 1-2, 4-6, 8-10, 12-16, and 18-20 under 35 U.S.C. § 102(b) as being anticipated by Brubaker (U. S. Patent no. 5,735,367), asserting that Brubaker discloses a brake system configured for use with a shopping cart that anticipates the brake system of Claims 1-2, 4-6, 8-10, 12-16, and 18-20.

Claim 1, as amended, recites a brake system configured for use with a shopping cart. The shopping cart includes a handle, a pivoting member attached to each one of opposed

ends of the shopping cart handle, and a braking force apparatus coupled to the shopping cart handle. The pivoting member is configured for being attached to a shopping cart frame. Each pivoting member enables the shopping cart handle to be moved between an at-rest position and a displaced position. The braking force apparatus is configured for being selectively movable between a normally applied braking force state and a disengaged state when the handle is correspondingly moved between the at-rest position and the displaced position. The shopping cart handle is configured for having a force exerted thereon for pushing the attached shopping cart frame. The force exerted for pushing the attached shopping cart moves the shopping cart handle from the at-rest position to the displaced position.

Claim 9, as amended, recites a shopping cart including a shopping cart frame; a handle assembly and a braking force assembly. The handle assembly includes an elongated handle having opposed ends and a pivoting member attached between each one of said opposed ends and the shopping cart frame, thereby enabling the elongated handle to be moved between an at-rest position and a displaced position. The braking force apparatus is coupled to the elongated handle and mounted on the shopping cart frame adjacent to a wheel assembly mounting location of the shopping cart frame. The braking force apparatus is configured for being selectively movable between a normally applied braking force state and a disengaged state when the handle is correspondingly moved between the at-rest position and the displaced position. The elongated handle is configured for having a force exerted thereon for pushing the shopping cart frame. The force exerted for pushing the shopping cart frame moves the shopping cart handle from the at-rest position to the displaced position.

Claim 15, as amended, recites a shopping cart including a shopping cart frame, a plurality of wheel assemblies mounted on the shopping cart frame, a handle pivotally attached to the shopping cart frame and a braking force apparatus coupled to the handle. The handle is movable between an at-rest position and a displaced position. The braking force apparatus is mounted on the shopping cart frame in a manner enabling a braking force to be applied on one of said wheel assemblies, wherein the brake force apparatus applies the braking force when the handle is in the at-rest position and disengages the braking force when the handle is moved toward the displaced position. The handle is configured for having a force exerted thereon for pushing the shopping cart frame. The force exerted for pushing the shopping cart frame moves the shopping cart handle from the at-rest position to the displaced position.

The Applicant submits that Brubaker does not disclose the brake system or shopping cart recited in any one of amended Claims 1, 9 and 15. Specifically, Brubaker discloses a hand operated shopping cart brake for a shopping cart. The hand operated shopping cart brake includes a handle bar 30 that is configured for having a force exerted thereon for pushing the shopping cart and a hand lever 50 that is configured for having a force exerted thereon for operating the hand operated shopping cart brake. The force applied to the hand lever 50 for disengaging the brake system hand lever (e.g., a squeezing hand force) is applied in an opposite direction as the force applied to the handle bar 30 for pushing the shopping cart. Accordingly, Brubaker requires separate forces for disengaging the brake system and pushing the shopping cart. More specifically, the force applied for pushing the shopping cart does not inherently disengage the brake system.

In view of the amendments made to independent Claims 1, 9 and 15 and the associated remarks, the Applicant submits that independent Claims 1, 9 and 15, and hence all claims dependent thereon, are patentable under 35 U.S.C. 102(b) over Brubaker because these amended claims recite features, physical structure and/or function not present in, configured for being provided by, or intended to be provided by Brubaker, and therefore distinguish physically over the cited and relied upon references. Accordingly, the Applicant submits that the rejections under 35 U.S.C. § 102(b) applied to Claims 1-2, 4-6, 8-10, 12-16, and 18-20 as being anticipated by Brubaker are overcome and respectfully requests the Office to withdraw the rejections asserted against Claims 1-2, 4-6, 8-10, 12-16, and 18-20 under 35 U.S.C. § 102(b) as being anticipated by Brubaker.


Claims Rejected Under 35 U.S.C. 103(a)

The Office has rejected Claims 3, 11 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Brubaker in view of DeGoma (U.S. Patent no. 6,296,261) and has rejected Claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Brubaker in view of Mennesson (U. S. Patent no. 2,699,228). The Office has asserted that, in combination, Brubaker and DeGoma teach the brake system of claim 3 and the shopping cart of claims 11 and 17. The Office has further asserted that, in combination, Brubaker and Mennesson teach the shopping cart of Claim 7. In view of the amendments and remarks presented above with respect to Claims 1, 9 and 15, the Applicant respectfully submits that the rejections of Claims 3, 7, 11 and 17 under 35 U.S.C. § 103(a) have been traversed.

CONCLUSIONS

The Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for reasons clearly apparent, the Applicant respectfully requests full allowance of all pending claims. If there are any matters that can be discussed by telephone to further the prosecution of the Application, the Applicant invites the Examiner to contact the undersigned at 512-372-8240 at the Examiner's convenience.

Respectfully Submitted,
Jake J. Crowley

By: 
Raymond M. Galasso
Reg. No. 37,832

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